

CR-193-2022 (O&M)

1

297-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-193-2022 (O&M)
Reserved on : 11.04.2023
Date of decision : 18.04.2023

Bishambar Dayal KaushikPetitioner

Versus

Gurmeet SinghRespondent

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arun Kumar Goyat, Advocate for the petitioner.

Mr. D.R. Punia, Advocate for the respondent.

ALKA SARIN, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure, 1908 (CPC) challenging the order dated 20.12.2021 passed by the Trial Court whereby the application filed by the defendant-petitioner under Order 7 Rule 11 read with Section 151 of CPC has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit against the defendant-petitioner for recovery of damages for defaming and dragging the plaintiff-respondent into false and frivolous complaints before various authorities i.e. HRERA, Registrar Firm and Societies, Panchkula, CM Window and State Registrar of Societies etc.

The defendant-petitioner filed an application under Order 7 Rule 11 of CPC for rejection of the plaint on the ground that the same did not disclose any cause of action. It was averred in the application that in the suit, there is no mention of any statements which are defamatory in nature. It has also not been mentioned in the plaint as to where and when the alleged defamatory statements are stated to have been made. It was further averred that there were no details mentioned other than vague accusations. The plaintiff-respondent contested the application and filed a reply to the same. Vide the impugned order, the Trial Court dismissed the application holding that the issue could not be gone into without affording an opportunity of leading evidence to both the parties. Hence, the present revision petition by the defendant-petitioner.

3. Learned counsel for the defendant-petitioner has, while referring to the plaint (Annexure P-1), stated that the ingredients for filing of a suit for defamation are missing from the plaint. No details of any derogatory/defamatory statements alleged to have been made by the defendant-petitioner are given in the plaint. Even the details of the cases before the various authorities as alleged are not mentioned in the plaint. Learned counsel has further stated that a statement made before a court or a quasi-judicial authority is absolutely privileged and for the said reasons it cannot be made basis for a defamatory action. In support of his contentions, learned counsel has relied upon the judgment of this Court in the case of **Mahavir Singh Vs. Surinder Singh** [CR No.6008 of 2010 decided on 29.09.2010] and the judgment of the Delhi High Court in the case of **Brig. B.C. Rana (Retd.) Vs. Ms. Seema Katoch & Ors.** [2013 (198) DLT 35].

4. *Per contra*, learned counsel for the plaintiff-respondent has contended that it is only the contents of the plaint which are to be seen at the stage of Order 7 Rule 11 CPC and the cause of action is clearly made out on a meaningful reading of the plaint and hence, the impugned order dismissing the application has rightly been passed. In support of his contentions, learned counsel has relied upon the judgments in the cases of **Ram Parkash Vs. Jagdeep Singh Ghangas [2021 (2) RCR (Rent) 428]** and **Nanji Sunderji Sejpal Vs. Vithuram Shivlal Lahoti Denagi Trust & Ors. [2019 (2) CivCC 47]**.

5. I have heard learned counsel for the parties.

6. Order 7 Rule 1 of CPC reads as under :

“1. Particulars to be contained in plaint - The plaint shall contain the following particulars :

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or

relinquished a portion of his claim, the amount so allowed, or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits”

Order 7 Rule 1(e) CPC specifically states that the plaint shall contain the facts constituting the cause of action and when it arose.

7. A perusal of the plaint in the present case reveals that none of the facts constituting the cause of action i.e. defamation are forthcoming from the plaint. There is not a whisper as to which derogatory/defamatory statements have allegedly been made by the defendant-petitioner. The plaint is also totally silent regarding the details of the authorities wherein the alleged defamatory/derogatory statements are alleged to have been made by the defendant-petitioner. Simply averring in the plaint that defamatory and derogatory statements have been made would not amount to disclosure of cause of action. The plaint also does not disclose any dates on which the cause of action is stated to have arisen. Though a legal notice dated 07.12.2019 is referred to, however, the date of the alleged act of defamation is not forthcoming. Learned counsel for the plaintiff-respondent is unable to convince this Court that the details as mentioned in the plaint were sufficient for continuation of the civil suit.

8. The Delhi High Court in the case of **Brig. B.C. Rana** (supra), after referring to numerous judgments, has held as under :

“41. It follows, therefore, and, it is also quite plain, from the above decisions, that the doctrine of judicial

privilege, even when extended to tribunals exercising functions equivalent to those of an established Court of justice, applies where there is an authorised enquiry, which though not before a Court of justice, is before a tribunal which has similar attributes.

42. The essence of the rule of Absolute Privilege, therefore, is that the complaint must be addressed to a body which has judicial functions, or, quasi-judicial functions, and, the complaint must be a step in setting in motion judicial or quasi-judicial proceedings.

43. Observing the facts of the present case in the background of the law & the principles discussed above, the present suit for defamation is based on the defamatory statements contained in the affidavits filed by the defendants in the proceedings before the Registrar of the Cooperative Society, Delhi. In my view, the proceedings before the Registrar of the cooperative society are quasi-judicial in nature.”

Yet again in para 46, it has been held as under :

“46. Thus to conclude, the statements made in the affidavit being filed by the defendants in the course of judicial proceedings before the Registrar of the Society is Absolutely Privileged and for the said reason cannot be made basis for any defamatory action. In the light of this observation, the present plaint deserves to be

rejected under 7, Rule 11(d), Civil Procedure Code, 1908 being barred by law.”

9. The judgment relied upon by learned counsel for the plaintiff-respondent in the case of **Ram Parkash** (supra) would not come to his aid inasmuch as in the said case it has been held that the averments made in the written statement are immaterial at the time of deciding an application under Order 7 Rule 11 CPC. In the present case the plaint itself does not disclose any cause of action. That being so, learned counsel cannot gain any advantage from the said decision. The judgment in the case of **Nanji Sunderji Sejjpal** (supra) is also not applicable inasmuch as in the said case the cause of action was disclosed in the plaint. In the present case the contents of the plaint do not disclose any cause of action whatsoever.

10. In view of the above, the present revision petition is allowed. Consequently, the application under Order 7 Rule 11 read with Section 151 CPC filed by the defendant-petitioner stands allowed and the plaint in civil suit titled ‘Gurmeet Singh vs. Bishamber Dayal Kaushik’ is ordered to be rejected under Order 7 Rule 11(a) and (d) on the grounds of not disclosing any cause of action and being barred by law.

11. Pending applications, if any, also stand disposed off.

18.04.2023

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO